

Mollohan Calls on EPA to Abandon Harmful Coal Guidance

Washington, D.C. — U.S. Representatives Alan B. Mollohan and Nick J. Rahall (both D-WV) and Rick Boucher (D-VA) Wednesday called on the Environmental Protection Agency (EPA) to withdraw the Guidance it issued last month pertaining to the permitting of surface coal mining operations in the Appalachian region.

“While we have been urging the agency to provide clarity about the permitting process, we believe that this guidance is premature largely because we do not believe that full consideration has been given to the far-reaching implications of the policies it espouses, especially as it relates to conductivity,” the Congressmen said in their letter to EPA Administrator Lisa Jackson.

The legislators argued that much more work must be done to understand the broad effects of the policies contained in the Guidance on coal mining and other economic activities throughout Appalachia. In particular, the Guidance contains newly proposed limitations on the level of conductivity (electrical charge) in streams impacted by surface mining operations, a matter that has become a central and controversial issue in surface mining permit applications in the Appalachian states over recent months.

“Never before this Administration has the Appalachian coal mining industry been required to address questions of conductivity and much remains to be learned before we can possibly understand how conductivity limits will impact coal mining -- both surface and underground -- as well as any number of essential economic activities, such as road construction that is also critical to allowing the Appalachian region to achieve economic equity,” the legislators said.

Noting that the new Guidance causes the Appalachian region to be treated differently under the Clean Water Act from every other region of the country, Rahall, Mollohan and Boucher called on the agency to, instead, ensure that this national law be applied “evenly and equally” throughout the country.

“We urge you to withdraw the April 1, 2010, Guidance and continue to work with the affected States, the involved federal agencies, and all stakeholders to develop guidelines that truly provide a balanced process for energy development and environmental protection,” the Congressmen said.

The full text of the letter follows:

Lisa P. Jackson, Administrator

Dear Administrator Jackson:

We write to express our concerns about the April 1, 2010, Guidance on EPA Review of Appalachian Surface Coal Mining Operations under the Clean Water Act, National Environmental Policy Act, and the Environmental Justice Executive Order. While we have been urging the agency to provide clarity about the permitting process, we believe that this guidance is premature largely because we do not believe that full consideration has been given to the far-reaching implications of the policies it espouses, especially as it relates to conductivity.

Essentially, EPA is seeking to bootstrap conductivity as a section 402 effluent limitation standard through the section 404 process. And to do so only in Appalachia, and only with respect to surface coal mining operations. Not only is there no precedent for such an action, but it is also patently a wrong approach to implementing the Clean Water Act. This is a national law and should be applied evenly and equally throughout the country as has been done in the past, and there is simply no justification for departing from that practice.

Never before this Administration has the Appalachian coal mining industry been required to address questions of conductivity and much remains to be learned before we can possibly understand how conductivity limits will impact coal mining B both surface and underground B as well as any number of essential economic activities, such as road construction that is also critical to allowing the Appalachian region to achieve economic equity. To wit, we must question why a hardrock mining operation in California, or a shopping mall construction project in New Jersey, which may impact an intermittent or ephemeral stream, should not be held to the same standard.

Aiming this guidance only at surface coal mining in Appalachia increases the disadvantage already suffered by the industry in this region when compared to Western mining operations. In fact, it speaks volumes that the guidance specifically notes Aenvironmental justice@ as one of the principles driving these policies but sorely fails to address the equally noble goal of economic fairness. The Appalachian states know all too well the challenges of economic inequity and any actions that would serve to further undermine the fragile economy of this region ought to be met with a robust federal effort to shore up and improve the economy.

For these reasons, we urge you to withdraw the April 1, 2010, Guidance and continue to work with the affected States, the involved federal agencies, and all stakeholders to develop guidelines that truly provide a balanced process for energy development and environmental protection.

[Signed - Mollohan, Rahall, Boucher]